

## CCRB INVESTIGATIVE RECOMMENDATION

|   |   |                           |  |                                    |                                 |
|---|---|---------------------------|--|------------------------------------|---------------------------------|
| Investigator:<br>Benjamin Wurtzel                 | Team:<br>Squad #2   | CCRB Case #:<br>201606160 | <input checked="" type="checkbox"/> Force              | <input type="checkbox"/> Discourt. | <input type="checkbox"/> U.S.   |
|   |   |                           | <input type="checkbox"/> Abuse                         | <input type="checkbox"/> O.L.      | <input type="checkbox"/> Injury |
| Incident Date(s)<br>Monday, 07/11/2016 9:00 PM    | Location of Incident:<br>West 116th Street and Lenox Avenue | Precinct:<br>28           | 18 Mo. SOL<br>1/11/2018                                | EO SOL<br>1/11/2018                |                                 |
| Date/Time CV Reported<br>Mon, 07/11/2016 11:20 PM | CV Reported At:<br>IAB                                      | How CV Reported:<br>Phone | Date/Time Received at CCRB<br>Mon, 07/18/2016 10:51 AM |                                    |                                 |

| Complainant/Victim | Type | Home Address |
|--------------------|------|--------------|
|                    |      |              |

| Subject Officer(s)   | Shield | TaxID  | Command |
|----------------------|--------|--------|---------|
| 1. POM Michael Ponzi | 21249  | 931898 | SRG 5   |
| 2. An officer        |        |        |         |

| Witness Officer(s)          | Shield No | Tax No | Cmd Name |
|-----------------------------|-----------|--------|----------|
| 1. SGT Matthew Fried        | 01790     | 934884 | SRG 5    |
| 2. POM Jonathan Formichelli | 06293     | 948979 | SRG 5    |
| 3. CPT Kevin Taylor         | 00000     | 917183 | EMP REL  |
| 4. INS John Dadamo          | 00000     | 913627 | SRG      |

| Officer(s)          | Allegation  | Investigator Recommendation |
|---------------------|---|-----------------------------|
| A.POM Michael Ponzi | Force: Police Officer Michael Ponzi used a chokehold against § 87(2)(b) |                             |
| B. An officer       | Force: An officer struck § 87(2)(b) with a flashlight.                  |                             |
| C. An officer       | Force: An officer used physical force against § 87(2)(b)                |                             |

### Case Summary

On July 11, 2016, Sergeant Matthew Fried of Strategic Response Group 5 filed this complaint with IAB on behalf of § 87(2)(b) where it received original log number 2016-24562 (Board Review 01). On July 18, 2016, this case was referred to the CCRB for investigation.

On July 11, 2016, at approximately 9:00 p.m., § 87(2)(b) was crossing West 116th Street mid-block between Lenox Avenue and 5th Avenue in Manhattan. § 87(2)(b) observed a protest in the vicinity and blew a horn he was carrying as he crossed the street. At this time, Police Officers Michael Ponzi, Jonathan Formichelli, and Sergeant Fried of Strategic Response Group 5 approached him, and Police Officer Ponzi allegedly wrapped an arm around the front of his body from behind and held his forearm against § 87(2)(b)'s neck, resulting in discomfort to this throat (**Allegation A**).

§ 87(2)(b) further alleged that he felt two hard impacts in his lower back and ribcage which he believed were respectively caused by a flashlight and a closed fist (**Allegations B and C**). § 87(2)(b) was placed in handcuffs, transported to § 87(2)(b) for medical treatment, and was later released with two summonses for § 87(2)(b) (Board Review 02).

No video was obtained by the investigation for this incident.

### Mediation, Civil and Criminal Histories

This case was unsuitable for mediation due to § 87(2)(b)'s arrest. On September 14, 2016, the Comptroller's Office of the City of New York confirmed that § 87(2)(b) did not file a Notice of Claim in regards to this incident (Board Review 03). [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

### Civilian and Officer CCRB Histories

- This is the first CCRB case involving § 87(2)(b) (Board Review 05).
- Police Officer Ponzi has been a member of the NYPD for 14 years and has had no prior CCRB allegations filed against him (Board Review 06).

### Potential Issues

§ 87(2)(b) refused to sign a HIPAA and denied the investigation access to his medical records.

During his telephone statement, § 87(2)(b) stated that an officer clasped a hand around his neck and made a deliberate effort to choke him with his palm and fingers (Board Review 07). During his in-person statement, § 87(2)(b) stated that the involved officer placed his forearm against his neck while detaining him from behind. In the telephone statement, § 87(2)(b) alleged restricted breathing but he did not allege any difficulty breathing during his account of the incident at his verified statement.

§ 87(2)(b) alleged that he was struck with a flashlight based on the weight and material of the object he felt. § 87(2)(b) did not see the object that allegedly struck him and could not

provide additional details to inform his belief that he was struck with a flashlight. § 87(2)(b) alleged during his telephone statement that he was struck in the back of his neck but did not allege this during his verified statement.

## **Findings and Recommendations**

### **Explanation of Subject Officer Identification**

§ 87(2)(b) could only describe the officer who came up behind him and forcibly detained him as a uniformed white male. Police Officer Ponzi, a white male who was dressed in a uniform at the time of the incident, identified himself as the officer who first approached § 87(2)(b) from behind and placed him in handcuffs. § 87(2)(g)

§ 87(2)(b) could provide no description for the officer who allegedly struck him with a flashlight. § 87(2)(b) further stated that he was struck in the back a second time but could provide no description of the officer who committed this allegation and could not say whether this was the same officer that allegedly struck him with a flashlight. Police Officer Ponzi and Sergeant Fried were the only officers who admitted to touching § 87(2)(b) and stated that no other officers were involved in his detainment.

§ 87(2)(b)'s account of the incident indicates that he did not believe Sergeant Fried approached him until after he had felt the pain to his back. Sergeant Fried and Police Officer Ponzi denied striking § 87(2)(b) in any way and denied seeing any other officer approach § 87(2)(b). Police Officer Formichelli corroborated this account. § 87(2)(g)

### **Allegation A – Force: Police Officer Michael Ponzi used a chokehold against § 87(2)(b)**

### **Allegation B – Force: An officer struck § 87(2)(b) with a flashlight.**

### **Allegation C – Force: An officer used physical force against § 87(2)(b)**

§ 87(2)(b) provided a telephone statement to the CCRB on July 20, 2016. § 87(2)(b) was interviewed at the CCRB on July 27, 2016. Sergeant Fried was interviewed at the CCRB on September 1, 2016 (Board Review 08). Police Officers Ponzi and Formichelli were interviewed at the CCRB on September 27, 2016 (Board Review 09-10).

§ 87(2)(b) stated that he was walking in the direction of a demonstration and that he blew into a horn that he had in his possession while crossing the street mid-block. § 87(2)(b) did not provide any justification for blowing his horn and denied joining or intending to join the protest that he was walking towards. § 87(2)(b) alleged that Police Officer Ponzi reached an arm around his shoulder and applied pressure to his throat with his forearm. § 87(2)(b) is approximately 5'7" tall. In his telephone statement, § 87(2)(b) stated that this action restricted his breathing but stated in his verified statement that he was able to speak and that his breathing was not restricted.

§ 87(2)(b) further alleged that he was struck in the back with an object he believed to be a flashlight and was struck a second time with a closed fist. As stated above, § 87(2)(b) could

provide no description for the officer who performed this action. § 87(2)(b) identified Sergeant Fried as being in the vicinity but stated that he arrived after he had been struck. As stated above, § 87(2)(b) refused to provide his medical records to the investigation.

Police Officer Ponzi, Sergeant Fried, and Police Officer Formichelli provided consistent accounts of § 87(2)(b)'s detainment. All three officers stated that they observed § 87(2)(b) walking in the street, blocking traffic during a protest, refuse instructions to get on the sidewalk, and that he did not resist when Police Officer Ponzi and Sergeant Fried went to detain him.

Police Officer Ponzi confirmed that he approached § 87(2)(b) from behind and was the first officer to make physical contact with him. Police Officer Ponzi stated that he grabbed ahold of § 87(2)(b)'s hands, pulled them behind his back, and placed him in handcuffs. Police Officer Ponzi stated that § 87(2)(b) did not offer any resistance and denied that he could have reached around § 87(2)(b)'s neck, citing his own height as 4'10" tall and stating that it would be difficult for him to reach over the shoulder of § 87(2)(b) who was much taller. Police Officer Ponzi denied striking § 87(2)(b) in any way and did not utilize any tools in § 87(2)(b)'s detainment. He used plastic handcuffs to handcuff § 87(2)(b) and stated that he would have used metal handcuffs if § 87(2)(b) had resisted.

Police Officer Ponzi stated that § 87(2)(b) did not ask for medical attention until he was in handcuffs, that he refused to provide a reason for his request, that he attempted to decline medical attention once EMS actually arrived at the location and that it was officers and EMS who insisted on taking him to the hospital since he had initially requested medical attention. Police Officer Ponzi's memo book reflects this information and notes that all medical tests had negative results. Police Officer Ponzi's memo book further reflects that § 87(2)(b) informed medical personnel that officers choked him (Board Review 12).

Sergeant Fried stated that he placed § 87(2)(b) in handcuffs by pulling his arms behind him and placing him in handcuffs with assistance from Police Officer Ponzi. Sergeant Fried denied reaching over § 87(2)(b) or seeing any other officer do so. Sergeant Fried denied using any tools to detain § 87(2)(b) and denied striking him.

Police Officer Formichelli denied having any physical contact with § 87(2)(b) and did not observe Police Officer Ponzi or Sgt. Fried reach over § 87(2)(b)'s shoulder as they were handcuffing him from behind.

All three officers denied that § 87(2)(b) expressed difficulty breathing or exhibited any signs of labored breathing during the process of detainment. Sergeant Fried's and Police Officer Formichelli's memo books also reflect § 87(2)(b)'s allegations of injuries and his negative medical test results (Board Review 13-14). All three officers denied using their flashlights at any time on the incident date and noted good lighting conditions at the incident location.

The Threat, Resistance or Injury Incident Worksheet (TRI) prepared for this incident by Sergeant Fried corroborates the accounts provided by the officers in their CCRB interviews, noting that no physical injuries were observed on § 87(2)(b) and that his arrest was uneventful and that he did not complain of unspecified pain until after he was in handcuffs. The TRI reflects that § 87(2)(b)

§ 87(2)(b) informed medical staff that he was assaulted by the police and notes the officers' assertion that no force was used against him (Board Review 15).

Photographs of § 87(2)(b)'s neck and abdomen, taken at the hospital by the NYPD, were provided to the investigation. In the photographs, § 87(2)(b)'s neck is in a brace but there is no apparent redness, swelling or any other apparent injury. Additionally, § 87(2)(b)'s photographs of his back and ribcage, taken within hours of the incident, do not show any injuries or swelling (Board Review 11).

§ 87(2)(g)  
[Redacted text block]

§ 87(2)(g)  
[Redacted text block]

§ 87(2)(g)  
[Redacted text block]

Squad: 2

|               |                 |       |       |
|---------------|-----------------|-------|-------|
| Investigator: | _____           | _____ | _____ |
|               | Signature       | Print | Date  |
| Squad Leader: | _____           | _____ | _____ |
|               | Title/Signature | Print | Date  |
| Reviewer:     | _____           | _____ | _____ |
|               | Title/Signature | Print | Date  |